

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Frank Brickner,

Appellant,

v.

Case No. 10-REC-08-0223

Cuyahoga County Board of Commissioners and
Cuyahoga County Office of Human Resources,

Appellees.

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant was PROPERLY CLASSIFIED as a Social Program Administrator 4 from approximately March 3, 2010 through May 2011, and should be RECLASSIFIED as an Assistant Director, pursuant to O.R.C. §§ 124.03 and 124.14.

Casey - Aye
Lumpe - Aye
Tillery - Aye

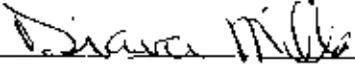



Terry L. Casey, *Chairman*

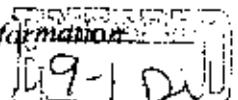
CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, September 1, 2011.


Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.



**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Frank Brickner,

Case No. 10-REC-08-0223

Appellant

v.

June 23, 2011

Cuyahoga Co., Board of Commissioners

and

Cuyahoga Co. Office of Human Resources,

Appellees

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on June 8, 2011, at 11:30 a.m. Present at the hearing was the Appellant, Frank Brickner, who appeared *pro se*, and the Appellees, the Cuyahoga County Board of Commissioners and the Cuyahoga County Office of Human Resources were present through its designee, Albert Bouchahine, Personnel Manager and was represented by Appellee's counsel Mr. Dale F. Pelsozy, an Assistant Prosecuting Attorney. The Appellant's direct supervisor was not present, as it was difficult to exactly figure out who his immediate supervisor was at the time of his audit request since Cuyahoga's County government structure was under transformation, as well as the Appellant's position had in the County's Workforce Development Department had both City of Cleveland employees and County employees. However, Mr. Jim Battigaglia, the Regional Director of the Archer Company, was present at the hearing, as he was the person who completed the audit and offered testimony at the record hearing regarding his recommendation.

On or about March 3, 2010, the Appellant, Frank Brickner, wrote a letter to his then supervisor, Mr. Larry Benders, a City of Cleveland employee, requesting that his position of a Business Service Manager, classification specification number 105232, be reclassified to an Assistant Director's position, classification specification number 1051312, as he claimed that he had assumed additional duties

while employed as a Business Service Manager. Subsequently, on or about July 24, 2010, the Appellant received the results of the audit request which notified him that his position should be reclassified to a Social Program Administrator 4, classification specification number 1056315, with an increase in pay to be effective March 14, 2010. After receiving the Cuyahoga County Office of Human Resource's decision, the Appellant timely filed his appeal to this Board on or about August 23, 2010. It should be noted that the aforementioned was stipulated to, as well as, the subject matter jurisdiction of this Board was established pursuant to O.R.C. sections 124.03 and 124.14.

Before proceeding onto the record hearing, Appellant Brickner stated that although he is presently classified as a Social Program Administrator 4, he is seeking to be reclassified to the position of either an Assistant Director's position, classification specification number 1051312, an Executive Officer's position, classification specification number 1056318 or a Social Program Administrator 5, classification specification number 1056316. As a result, the undersigned Administrative Law Judge considered all of the above mentioned classification specifications in making a determination in this reclassification appeal.

STATEMENT OF THE CASE

The first witness to testify was the Appellant, Frank Brickner, who explained that he held the position of Business Service Manager since October 2000, up until the time of his reclassification as a Social Program Administrator 4 on or about March 3, 2010. The witness explained that he was employed in the Workforce Development Department as a result of the workforce investment act and that he has been with the County for approximately the last 20 years. Further, when questioned, the witness explained that 2009 to 2010 his two supervisors were Mr. Larry Benders, an Executive Director with the Cuyahoga County Workforce Development Department and Ms. Judith Weyburne, a Chief Operating Officer with the city of Cleveland. The witness testified that the Workforce Development Department was an amalgamation of both County employees and city employees whose purpose was to assist jobseekers and employers to get a match, funded with federal grant monies from the Department of Labor with past through dollars from the state of Ohio, and that the Department did not receive any general funding monies. When questioned, the witness explained that he is unclear whether the

Workforce Development Department is a stand-alone agency or is under the Human Services Department. Moreover, the witness explained that dating back to 2006 to 2007 there were approximately 100 or so County/City employees in the department, and that the total today is somewhere in the 30s.

Mr. Brickner, when questioned, testified that while his position was that of a Business Services Manager he was known as a Chief Financial Officer for the Workforce Development Department, whose main responsibilities included, but were not limited to, fiscal, contracting, information technology, building maintenance and human resource payroll functions. The witness explained that back in 2006 there were approximately 14 employees in his section, and that today there are only six employees, two County and four City employees, wherein he provides supervision to these employees as he completes performance evaluations, approves leave time, effectively recommends discipline and from time to time he would act on behalf of his supervisor and/or supervisors, when and if needed. The witness identified Appellant's Exhibit 1, as a table of organization dated November 20, 2009, wherein he noted his subordinate employees and explained their duties that they each and all performed, and stated that he had been providing supervision to these employees since late May of 2009, and still does today. Moreover, the witness testified that he is a full-time employee working Monday through Friday 40 hours per week from 8:00 a.m. through 4:00 p.m., wherein he could flex, if he so desired. However, the witness testified that since the Intergovernmental agreement with the Governmental Office of Cuyahoga County in 2010 he has been left pretty much on his own to run the department himself, wherein he took on additional duties outside of his normal duties as a Business Services Manager. Additionally, the witness testified that the "contracting and monitoring" part of the grant pass through monies budget dating back to 2009 was approximately \$40 million, and that today in 2011 that amount has dropped to approximately \$15-\$16 million.

When reviewing the classification specification of a Business Services Manager the witness did agree that he did manage the business services and its activities for a County department with budgetary accountability greater than \$13 million. Moreover, when questioned, the witness testified that he coordinated the fiscal management activities for the department along with supervising employees involved in division activities. Additionally, the witness explained he also coordinated the financial reporting preparation and interfacing with various State, County and

Federal offices and agencies, along with coordinating and conducting studies, as well.

Next, the witness identified Appellee's exhibit A, as the classification specification of a Social Program Administrator 4. The witness noted that this is the classification specification which the audit found that he should be placed into, but respectively disagreed with the assessment. The witness explained that he did manage multiple social programs in a Department with less than 500 employees, along with supervising lower-level senior supervisors. However, what was not so clear is whether or not he served as a staff specialist for the specific department director, at least for the last year or so, as the "supervisor" picture was fuzzy at best. Additionally, the witness when questioned testified that he did also perform various administrative functions which included preparing reports and budgets, all while acting as a liaison between his department and various stakeholders and recipients of the grant monies.

The witness then identified Appellee's exhibit B, as the classification specification of a Social Program Administrator 5. The witness explained that this is one of the classifications which he thinks he would fit him best. However, when questioned specifically with regard to the function statement the witness explained that he does not report to departmental director with the department of at least 800 employees, nor does he function as a staff specialist reporting to a Senior Human Services Administrator regarding human services issues. However, the witness testified that he does manage large and complex multiple social programs and perform various administrative functions. While the witness did testify that he supervises lower-level social program administrators, a review of his testimony would reveal differently, as they were classified as senior level supervisors, and not social program administrators.

The witness then identified Appellant's Exhibit 2, as best described as a payroll run sheet dated July 8, 2008, wherein it was noted that Ms. Laureen Atkins, a Social Program Administrator 5, his previous supervisor prior to Mr. Larry Benders, held the position as a Social Program Administrator 5, while the Workforce Development Department had less than 100 individuals at that time. Additionally, the witness identified Appellant's Exhibit 3 as a job posting for a Social Program Administrator 5 with the Department of Workforce Development posted April 26, 2010, after Ms. Atkins had left her position in February 2010. It was noted that while there were many applicants for this posting, the Appellant had not applied for the

posting, along with the Appellant's understanding that the posting and/or position was pulled due to a lack of funding and was never filled.

The witness identified Appellee's exhibit E, as the audit recommendation by Mr. Jim Battigaglia, wherein he found that Mr. Brickner was providing the additional duties of approving all department contracts and other Board requests; management of special projects; development of objectives and policies for the department and attending meetings in lieu of the Director. The witness also noted that the recommendation was to reclassify himself from Business Services Manager to a Social Program Administrator 4 which included an upgrade in pay. However, the witness noted that he had applied for the Assistant Director's classification as a result of the departure of Ms. Atkins as a Social Program Administrator 5.

Next, Mr. Brickner identified Appellee's exhibit C as his job reclassification to request that he sent on March 3, 2002 to Mr. Larry Benders. It was noted by the witness that at that point he was requesting to be reclassified to an Assistant Director's classification, as he had assumed additional responsibilities with Ms. Atkins departure. When questioned, with regard to the classification function, it was noted that its purpose of this classification is to assist a general government department director to manage the department including developing objectives and policies, assisting with administrative and budgetary matters, along with supervising staff. Further, when questioned whether or not Workforce Development was a general government department the witness could not state with specificity whether or not his department was a general government department. However, it was noted by the undersigned Administrative Law Judge that general government departments could include Budget and Management, Central Services, Development, Human Resources and Justice Affairs. Additionally, the witness testified that he did perform all of responsibilities listed in the essential job functions listed in the Assistant Director's classification specification.

The witness then identified Appellant's Exhibit 4 as the classification specification of an Executive Officer, as another classification which he was hoping to be reclassified into. When questioned with regard to the classification function it was noted that its purpose was to direct a quasi-independent, County-based organization which reported a Deputy County Administrator. Further, when questioned, the witness testified that Mr. Larry Benders was his supervisor who was a city of Cleveland employee, but that his time was actually approved by the County Administrator. Upon further questioning it was noted that Jim McCafferty was the

County administrator up until early January 2011 when his position was abolished. Thereafter, the witness testified that his time was then approved by Matt Carroll, the Chief of Staff of the County Executive until a month ago and presently Mr. Larry Benders who is at the County's Development Department is signing off on his timesheets.

Further, the witness testified that he has been asked to approve layoff requests and that he is being held to a higher standard than his level of responsibilities than what he had previously been prior to all the changes that have taken place.

Upon cross-examination, the witness testified that when he reported to Mr. Larry Benders he was not a Deputy County Administrator. Further, the witness testified that he did not apply for the Social Program Administrator 5's position as he had his hands full at that time, although he did take on additional duties in March 2010. When questioned, the witness explained that he did not take on any additional social work responsibilities, nor were there 800 employees in the department at that time. However, the witness testified that they did have Ms. Atkins who was a Social Program Administrator 5 in the department up until her departure in late February 2010. When questioned, the witness explained that he oversaw the human resource functions of the City employees, as well as the County employees in his office and that he often wrote the request for proposals and evaluated the programs, as well. Furthermore, when questioned, the witness explained that he did take on additional administrative duties from this Atkins, but not social duties.

The second witness and last witness to testify in Mr. Brickner's case was Mr. Jim Battigaglia, a Regional Director for the Archer Co., a company which performed the job audit on the Appellant's position. The witness testified that he has held his position with the Archer Co. for the last 19 years and identified Appellee's exhibit E as his recommendation that he made to the Cuyahoga County Office of Human Resources on or about June 21, 2010, wherein he recommended that the Appellant be reclassified from a Business Services Manager to a Social Program Administrator 4.

When questioned about his rationale, the witness testified that since the departure of Ms. Atkins, Mr. Brickner picked up the following additional duties; approving all department contracts and other Board requests; management of special projects; development of objectives and policies for the department and

attending meetings in lieu of the director. Specifically, the witness testified that he only looked into the Social Program Administrator series of classifications as they are considered to be within the Human Services department, in terms of the departments in which those classifications can properly function, as the Workforce Department is considered to be within the Human Services Department. When questioned why he did not consider the classification specification of a Social Program Administrator 5, the witness testified that the classification function of that classification specification calls for an employee to be in that position to be in a department with at least 800 employees, which was not the case in Mr. Brickner's situation, as there were only 30 individuals in that department. Additionally, when questioned as to why the Assistant Director's classification specification was not considered, the witness testified that that position is only for General Government Departments, which Human Services is not. However, it was noted that Mr. Brickner's previous supervisor Mr. Larry Benders who was at that time a city of Cleveland employee, now as of last month during the interim period of the audit recommendation and today's hearing, is now a county employee working with the Department of Development, a General Government Department, who is presently signing off on Mr. Brickner's time sheets and acting as a supervisor to him. When questioned why he did not consider the Executive Officer's classification specification, the witness testified that on the classification function of one holding that position has to report to a Deputy County Administrator, which prior to the audit Mr. Brickner was not reporting to that position, as well.

FINDINGS OF FACT

There was no real discrepancy about the Appellant's characterization regarding the duties that he performed and since there was no testimony offered by the Appellant's direct supervisor, I find as a matter of fact, the Appellant performed the duties about which he testified.

CONCLUSIONS OF LAW

This Board is required to perform several functions when determining the most appropriate classification for an Appellant coming before it. The Board must always review relevant classification specifications to determine which classification best describes the Appellant's actual job duties for the pertinent period of time. *Ford v.*

Ohio Department of Natural Resources (1990), 67 Ohio App. 3d 755. In making this determination, the Board considers the classification specification and the job duties outlined therein, as well as the percentages of time the Appellant devotes to each group of job duties. *Klug v. Ohio Department of Administrative Services* (May 19, 1988), Franklin Co. 87AP-306, unreported, 1988 WL54277. This Board's consideration is not solely limited to the duties contained within the classification specification, but may also embrace other relevant facts submitted by the effected parties. *Gordon v. Ohio Department of Administrative Services* (March 31, 1988), Franklin Co. 88AP-0122, unreported, 1988 WL37094.

As a general rule, the Appellant seeking a reclassification to a higher position must demonstrate that his or her respective job duties substantially satisfy those of the higher classification. *Mounts v. Ohio Department of Administrative Services* (1984), 17 Ohio App. 3d 125; *Deist v. Kent State University* (May 23, 1987), Franklin Co. 87AP-28, unreported.

This Board must consider the relation between the classification specifications at hand and testimony presented and evidence admitted. This Board's consideration, however, is not limited solely to the duties contained in the classification specifications, but may also embrace other relevant facts submitted by any of the affected parties. *Gordon v. Dept. of Admin. Services*, No. 86AP-1022, slip op. (Ohio Ct. App. 10th Dist., March 31, 1988).

County personnel departments may either devise and utilize their own classification plan, upon proper compliance with the requirements of the Ohio Revised Code and Administrative Code, or may utilize the classification plan established by the Department of Administrative Services for county use. Appellee has promulgated its own county classification plan, therefore, the classification specifications considered in this appeal are those promulgated by Appellee. Appellee's Rule 4, contained within its classification plan, notes that an employee must perform the *mandatory duties stated in the classification function section of the classification specification for at least twenty percent of his or her work time.* (Emphasis Added).

The classification specifications considered by the undersigned Administrative Law Judge were the Business Service Manager, classification specification number 105232, a Social Program Administrator 4, classification specification number 1056315, an Assistant Director's position, classification

specification number 1051312, an Executive Officer's position, classification specification number 1056318 and the Social Program Administrator 5, classification specification number 1056316.

With respect to the classification specification of a Social Program Administrator 5, the testimony revealed according to the classification function statement that one holding this classification had to report to a specific departmental director in a department with at least 800 employees and supervise lower-level social program administrators. The evidence this case clearly revealed that Mr. Brickner's Department only had approximately 30 employees and that he did not supervise lower-level social administrators. Therefore, the undersigned Administrative Law Judge rejected this classification specification as not being the best fit for the Appellant herein.

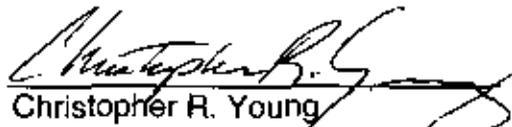
When reviewing the classification specification for an Executive Officer the classification function statement states that its purpose is to direct a quasi-independent, County-based organization while reporting to a Deputy County Administrator. Again, the evidence revealed through the testimonial and documentary evidence that the Appellant did not report to a Deputy County Administrator. As such, the classification specification for an Executive Officer was rejected by the undersigned, as well.

When reviewing the job classification specification for a Business Services Manager the Appellant clearly met all of the essential job functions listed in the specification itself. Moreover, with regards the classification function statement the Appellant reported to a departmental director and managed the business services activities with budgetary accountability of greater than \$13 million. However, when compared to the Social Program Administrator 4 classification specification, the Appellant clearly met all the essential job functions listed within this specification, to a somewhat higher degree, supervising senior level supervisors. Thus, the undersigned Administrative Law Judge rejected the Business Services Manager classification specification as not being a best fit for the Appellant herein.

Additionally, with respect to the classification specification of a Social Program Administrator 4, the evidence revealed that the Appellant met the classification function statement in that he managed social programs in a Department with less than 500 employees and supervised senior level supervisors, along with performing all the essential job functions listed in the specification itself. It

RECOMMENDATION

Therefore, it is my **RECOMMENDATION** that the Appellant, Frank Brickner, was **PROPERLY CLASSIFIED** as a Social Program Administrator 4 from approximately March 3, 2010 through May 2011, and that after May 2011 Mr. Brickner would be **MORE PROPERLY CLASSIFIED** as an Assistant Director.


Christopher R. Young
Administrative Law Judge

CRY:

was noted that the Department listed for the County classification specification of a Social Program Administrator 4 was for Human Services, only. Moreover, contained within the classification specifications there is a Department known as Workforce Department.

With respect to the classification specification of an Assistant Director the classification function statement states that the purpose of this classification is to department including developing objectives and policies, assisting with administrative and budgetary matters; and supervising staff. Additionally, when reviewing the essential job functions of the classification specification of an Assistant Director the testimonial documentary evidence revealed that Mr. Brickner did perform all of those duties. The evidence revealed that he assisted a general government department director, Mr. Larry Benders, the Development Department Director, as Mr. Benders is his current supervisor, as of last month, May 2011, in defining goals and objectives developing department policies and procedures. Further, the testimony revealed that the Appellant advised and assisted the director on budgetary problems and other specialized phases concerning policies and procedures, as well as supervising departmental staff. The testimony also revealed that the Appellant managed various special projects and represented the department at various meetings.

In order to make a determination which classification specification best fit Mr. Brickner the undersigned considered the testimonial evidence, as well as the documentary evidence contained within the case file regarding his job responsibilities. After a thorough review of the above noted classification specifications, it is my recommendation that the Appellant was properly classified as a Social Program Administrator 4, classification specification number 1056315, from the time he was placed into this classification until May 2011 when Mr. Benders, the Development Director, became his supervisor at which time he should have been reclassified into the classification specification of an Assistant Director.